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7  
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
9 STATE OF CALIFORNIA

10  
11 In the Matter of:

12 YES ON 34, A COALITION OF  
13 JUSTICE ORGS. and LISA LE,

14 Respondents.

FPPC Case No. 16/84

STIPULATION, DECISION AND ORDER

15 INTRODUCTION

16 In 2012, Proposition 34 was an unsuccessful ballot measure, which would have eliminated the  
17 death penalty in California. Yes on 34, a Coalition of Justice Orgs. was a primarily formed ballot  
18 measure committee. Lisa Le was the committee treasurer.

19 This case arose from an audit performed by the Political Reform Audit Program of the Franchise  
20 Tax Board. The period covered by the audit was January 1, 2011 through December 31, 2012. The audit  
21 found, and the Enforcement Division of the Fair Political Practices Commission confirmed, that Le and  
22 the committee failed to file various campaign reports by required deadlines in violation of the Political  
23 Reform Act.<sup>1</sup>

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27 <sup>1</sup> The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections  
28 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission  
are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references  
are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred  
3 in 2012. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they  
4 existed at that time.

5 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

6 When enacting the Political Reform Act, the people of California found and declared that  
7 previous laws regulating political practices suffered from inadequate enforcement by state and local  
8 authorities.<sup>2</sup> Thus, it was decreed that the Act “should be liberally construed to accomplish its  
9 purposes.”<sup>3</sup>

10 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in  
11 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper  
12 practices are inhibited.<sup>4</sup> Along these lines, the Act includes a comprehensive campaign reporting system.<sup>5</sup>  
13 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be  
14 “vigorously enforced.”<sup>6</sup>

15 **Mandatory Filing of Campaign Statements and Reports**

16 At the core of the Act’s campaign reporting system is the requirement that committees must file  
17 campaign statements and reports for certain reporting periods and by certain deadlines.<sup>7</sup>

18 For example, certain contributions must be reported within 24 hours. In this regard, the Act  
19 defines a “late contribution” to include any contribution that totals \$1,000 or more, which is made to or  
20 received by a primarily formed committee within 16 days before the election.<sup>8</sup> Each committee that  
21 receives a “late contribution” must report the contribution by filing a Form 497 within 24 hours.<sup>9</sup> If the  
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24 <sup>2</sup> Section 81001, subdivision (h).

25 <sup>3</sup> Section 81003.

26 <sup>4</sup> Section 81002, subdivision (a).

27 <sup>5</sup> Sections 84200, et seq.

28 <sup>6</sup> Section 81002, subdivision (f).

<sup>7</sup> Sections 84200, et seq.

<sup>8</sup> Section 82036, subdivision (a).

<sup>9</sup> Section 84203.

1 contribution is an in-kind or non-monetary contribution, the 24-hour deadline is extended to 48 hours.<sup>10</sup>  
2 In the case of a committee that is primarily formed to support a state ballot measure, the committee must  
3 file these reports—electronically—with the Secretary of State.<sup>11</sup>

4 Once a committee that is primarily formed to support a state ballot measure has received  
5 contributions totaling \$25,000 or more—or made expenditures totaling \$25,000 or more—it becomes an  
6 electronic filer with the Secretary of State. This means that the committee’s filings must be filed online  
7 or electronically. Prior to this, some filings only would have been required to be filed in paper format.<sup>12</sup>

8 Special rules apply to these electronic filers. Along these lines, the Act provides that an “election  
9 cycle” is the period of time commencing 90 days before an election—and ending on the day of the  
10 election.<sup>13</sup>

11 In addition to any other report that must be filed, if a committee (that is primarily formed to  
12 support a state ballot measure) is an electronic filer—and if that committee receives a contribution of  
13 \$1,000 or more during an election cycle—it must report receipt of the contribution by filing an election  
14 cycle report (Form 497) with the Secretary of State within 24 hours. Also, if such a committee receives a  
15 contribution of \$5,000 or more outside of an election cycle, it must report receipt of the contribution by  
16 filing a Form 497 with the Secretary of State within 10 business days.<sup>14</sup> Occasionally, this type of report  
17 is referred to as a \$5,000 report.

### 18 **Special Rules Regarding Non-Monetary Contributions**

19 The contributor of any non-monetary late contribution (of \$1,000 or more that is made or  
20 received during the last 16 days before the election) must notify the recipient, in writing, of the value of  
21 the contribution within 24 hours. However, this rule does not relieve the recipient of the duty to file the

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26 <sup>10</sup> Section 84203.3, subdivision (b).

27 <sup>11</sup> Sections 84203, subdivision (b); and 84215, subdivision (a).

28 <sup>12</sup> See Section 84605.

<sup>13</sup> Section 85204.

<sup>14</sup> See Section 85309, subdivisions (b) and (d).

1 required late contribution report.<sup>15</sup> If the actual value of non-monetary contributions is not known at the  
2 time of filing, the recipient may file a report disclosing a good faith estimate of the value. If the estimate  
3 turns out to be off by 20% or more, the amount must be corrected with an amendment within 24 hours of  
4 discovering the difference.<sup>16</sup> These rules, which explicitly apply to late contribution reports, also should  
5 be followed with respect to reporting non-monetary contributions on election cycle reports.<sup>17</sup>

6 A non-monetary contribution of the services of salaried personnel to a committee and the  
7 expenditure by the person making the salary payment are considered to be made on the payroll date of  
8 the salaried personnel.<sup>18</sup>

### 9 **Joint and Several Liability of Treasurer and Committee**

10 It is the duty of a committee treasurer to ensure that the committee complies with the Act.<sup>19</sup> A  
11 treasurer may be held jointly and severally liable, along with the committee, for violations committed by  
12 the committee.<sup>20</sup>

### 13 **SUMMARY OF THE FACTS**

14 In the general election that was held on November 6, 2012, one of the measures on the ballot was  
15 Proposition 34, which sought to eliminate the death penalty in California. (This ballot measure did not  
16 pass. Approximately 52% of the votes cast were against it.)

17 The Yes on 34 committee, which was primarily formed to support the measure, was sponsored  
18 by: PowerPAC.org, Amnesty International, Death Penalty Focus, the ACLU of Northern California, the  
19 ACLU of Southern California, and the ACLU of San Diego and Imperial Counties. (In September 2011,

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21 <sup>15</sup> See Section 84203.3. Also, see the *Nielsen* advice letter (A-98-111), page 9, which provides: “[A] committee that  
22 ‘receives’ a late in-kind contribution . . . is required to report that contribution . . . even if the contributor does not notify the  
23 donee within 24 hours as required by Section 84203.3 and the donee is otherwise unaware of the late in-kind contribution.” Of  
note, this rule has applied to late contribution reports for many years, but there is no corresponding rule for election cycle  
reports.

24 <sup>16</sup> See Regulation 18425, subdivision (b). Under current law, the option to estimate the value of a non-monetary  
contribution (and follow up with an amendment) applies to both late contribution reports and election cycle reports. In 2012,  
Regulation 18425, subdivision (b), only suggested this option in connection with late contribution reports.

25 <sup>17</sup> Election cycle reporting is intended to mirror late contribution reporting. For this reason, Section 85309,  
26 subdivision (b), provides: “[Election cycle] reports shall disclose the same information required by subdivision (a) of Section  
84203 [regarding late contribution reports]. . . .” Also, Section 81003 decrees that the Act “should be liberally construed to  
27 accomplish its purposes,” and these reporting rules promote transparency, which is one of the main purposes of the Act.

28 <sup>18</sup> Regulation 18423, subdivision (c).

<sup>19</sup> Sections 81004, 84100, and Regulation 18427.

<sup>20</sup> Sections 83116.5 and 91006.

1 Yes on 34 qualified as a primarily formed ballot measure committee. At the time, the name of the  
2 committee was Campaign in Support of the SAFE California ACT Sponsored by Taxpayers for Justice, a  
3 Coalition of Criminal Justice Advocates. Over the years, the name of the committee changed. In August  
4 2012, the committee became known as Yes on 34, a Coalition of Justice Orgs. The current name of the  
5 committee is Safe CA Campaign, a Coalition of Justice Organizations.)

6 In 2012, the committee was an electronic filer with the Secretary of State. Including non-  
7 monetary contributions, the committee raised and spent roughly eight million dollars. However, as  
8 described in more detail below, some of this activity was not properly reported by the committee and its  
9 treasurer, Lisa Le.

## 10 VIOLATIONS

### 11 Count 1

#### 12 *Failure to File Election Cycle Reports*

13 This count involves nine contributions—totaling close to \$111,401—that the committee received  
14 between approximately August 15 and October 31, 2012. Each contribution was in excess of \$1,000. Six  
15 of the contributions (totaling approximately \$81,786) were non-monetary contributions from the ACLU  
16 of Northern California in the form of staff time. The other three contributions (totaling approximately  
17 \$29,615) were monetary contributions from Pat Stryker, Steven K. Moreen, and the Public Defender  
18 Association Justice through Education Committee. The Yes on 34 committee and Le were required to  
19 report receipt of these contributions by filing election cycle reports (on Form 497's) with the Secretary of  
20 State within 24 hours, but they failed to do so.<sup>21</sup>

21 In this way, the Yes on 34 committee and Le violated Section 85309, subdivision (b).

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26 <sup>21</sup> Two of these contributions (including one of the non-monetary contributions from the ACLU), which totaled close  
27 to \$18,631, also were required to be reported on late contribution reports (pursuant to Sections 84203 and 84203.3) because  
28 they were received during the last 16 days before the election. However, failure to file these late contribution reports is  
excusable for purposes of this stipulation because the committee and its treasurer are being charged for failure to file the  
corresponding election cycle reports. (Section 84203, subdivision (e), provides that late contribution reports need not be filed  
for contributions that are disclosed on election cycle reports.)

1 **Count 2**

2 *Failure to File \$5,000 Reports*

3 This count involves four non-monetary contributions—totaling close to \$68,496—that the  
4 committee received between approximately February 9 and July 28, 2012. The first (in the approximate  
5 amount of \$24,000) was from the ACLU, Inc. for polling. The second (in the approximate amount of  
6 \$11,475) was from Denise Foderaro (and affiliated entities) for event food and beverages. The third (in  
7 the approximate amount of \$24,886) was from PowerPAC.org in the form of donated fees for  
8 professional and administrative services. The fourth (in the approximate amount of \$8,135) was from  
9 William Lerach for donated catering in connection with fundraising events.

10 Also, this count involves a monetary contribution—in the amount of \$500,000—that the  
11 committee received on or about November 15, 2012 from Open Society Policy, Inc.

12 The Yes on 34 committee and Le were required to report receipt of these contributions by filing  
13 \$5,000 reports with the Secretary of State within 10 business days, but they failed to do so.

14 In this way, the Yes on 34 committee and Le violated Section 85309, subdivision (d).

15 **PROPOSED PENALTY**

16 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per  
17 count. Thus, the maximum penalty that may be imposed is \$10,000.<sup>22</sup>

18 In determining the appropriate penalty for a particular violation of the Act, the Commission  
19 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the  
20 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
21 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
22 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
23 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
24 record of violations.<sup>23</sup> Additionally, the Commission considers penalties in prior cases with comparable  
25 violations.

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28 <sup>22</sup> See Section 83116, subdivision (c).

<sup>23</sup> Regulation 18361.5, subdivision (d).

1           The public harm inherent in campaign reporting violations is that the public is deprived of  
2 important, time-sensitive information regarding political contributions and expenditures. The  
3 Commission has found disclosure to be essential, especially before an election. In this case, the  
4 Enforcement Division did not find evidence of intentional concealment or deception. Rather, it appears  
5 the violations were the result of a lack of diligence.

6           However, Le is a sophisticated treasurer with ample reason to be familiar with the Act. She is a  
7 certified public accountant who has been a professional treasurer for many years.

8           In the current case, Count 1 involves failure to file election cycle reports. Recently, the  
9 Commission considered a settlement involving a similar violation. *In the Matter of Gray for Assembly*  
10 *2014, Adam Gray, and Douglas L. White*; FPPC Case No. 16/455 (approved Aug. 17, 2017), the  
11 Commission imposed a penalty in the amount of \$2,000 against an assembly candidate for failure to  
12 timely file 24-hour reports disclosing four late contributions totaling approximately \$12,700. About eight  
13 percent of this reportable activity was reported prior to the election—albeit three days late. The rest of  
14 this activity was not required to be reported until after the election, and it was reported about nine days  
15 late. All of the reportable activity in question comprised less than one percent of campaign receipts. In  
16 aggravation, not unlike the current case, it was noted that both the candidate and the treasurer had reason  
17 to be familiar with the Act. (Gray was an experienced candidate who had been involved with various  
18 political committees, and his treasurer was a partner with a law firm specializing in political law.)

19           Both *Gray* and the current case involve a small amount of reportable activity relative to the size  
20 of each campaign. (In the current case, Count 1 involves contributions comprising less than two percent  
21 of committee receipts. *Gray* involved less than one percent.)

22           However, in the current case, all of the reportable activity that is encompassed by Count 1 was  
23 required to be reported before the election—and about 78% of this activity was not reported before the  
24 election on any sort of filing. (The rest was disclosed on the committee’s last pre-election statement.) In  
25 contrast, *Gray* involved 24-hour reports that were filed only three to nine days late—and nearly none of  
26 this activity was required to be reported before the election.

27           Regarding the nature of the contributions in the current case, about 73% of the reportable activity  
28 relative to Count 1 consists of non-monetary contributions from the ACLU of Northern California in the

1 form of donated staff time. Le maintains that this activity was not reported in a timely manner before the  
2 election because she did not receive the ACLU's invoice/report regarding the value of the staff time until  
3 the first week of November 2012.

4 However, this staff time was an ongoing donation from the ACLU, which was coordinated with  
5 the Yes on 34 committee. Le was aware of the need to report the value of this time as a non-monetary  
6 contribution to the committee (as she had done earlier that year). She understands that she should have  
7 inquired and/or estimated—and the ACLU's failure to provide the information sooner did not excuse her  
8 failure to report a good faith estimate of the value of the staff time (and to later follow up with an  
9 amendment, if needed, to adjust the figure reported).

10 Under these circumstances, a penalty in the amount of \$3,500 is recommended for Count 1.

11 Count 2 involves failure to file \$5,000 reports. In the *Gray* case (discussed above), the  
12 Commission imposed a penalty in the amount of \$1,000 against an assembly candidate who failed to  
13 timely file a \$5,000 report disclosing receipt of a contribution in the amount of \$6,500. This reportable  
14 activity comprised less than one percent of campaign receipts. The required report was filed seven days  
15 late, but well before the election. As noted above (not unlike the current case), Gray and his treasurer  
16 were sophisticated parties who had reason to be familiar with the Act.

17 In the current case, Count 2 involves reportable activity comprising roughly seven percent of  
18 campaign receipts. This is substantially more than *Gray* (which involved less than one percent).  
19 However, about 88% of this activity in the current case was attributable to a single monetary contribution  
20 in the amount of \$500,000, which was not received by the committee until after the election. Although  
21 this large contribution was not disclosed on a \$5,000 report, it was disclosed on the committee's next  
22 campaign statement (which was filed in January 2013). The other activity was required to be reported  
23 before the election. Although this activity was not reported on \$5,000 reports as required by the Act, it  
24 was reported well before the election on committee campaign statements.

25 In aggravation, Le and the committee filed 16 other \$5,000 reports between 13 and 48 days late.  
26 These reports encompassed receipts totaling approximately \$1,060,000 (roughly 13% of campaign  
27 receipts), but each contribution ultimately was reported on the required form well before the elections in  
28 question. For settlement purposes, these late filings are not being charged separately. (Many of them fall

1 outside the Act’s 5-year statute of limitations because the violations occurred in 2011, and the tolling  
2 agreement that Le entered into with the Enforcement Division was not effective until January 23, 2017.)  
3 However, these late filings are being noted as an aggravating factor.

4 Under these circumstances, a penalty in the amount of \$3,500 is recommended for Count 2.

5 Higher penalties are not being sought because the parties cooperated with the Enforcement  
6 Division by agreeing to an early settlement—and by entering into a tolling agreement regarding the  
7 statute of limitations.

8 However, lower penalties are not being sought because of other violations that were found,  
9 including failure to maintain required records regarding the specific dates of receipt of non-monetary  
10 contributions (totaling approximately \$37,758)—and failure to report occupation/employer information  
11 for contributions received (totaling approximately \$47,864). For settlement purposes, these potential  
12 violations are not being charged. Instead, they are being noted as aggravating factors along with the late-  
13 filed \$5,000 reports discussed above.

14 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty  
15 in the amount of \$7,000 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Failure to file election cycle reports	\$3,500
2	Failure to file \$5,000 reports	\$3,500
		<b>Total: \$7,000</b>

### 19 CONCLUSION

20 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
21 Respondents Yes on 34, a Coalition of Justice Orgs. and Lisa Le hereby agree as follows:

- 22 1. Respondents violated the Act as described in the foregoing pages, which are a true and  
23 accurate summary of the facts in this matter.
- 24 2. This stipulation will be submitted for consideration by the Fair Political Practices  
25 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 26 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose  
27 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
28 liability of Respondents pursuant to Section 83116.

1           4.       Respondents have been provided with an opportunity to consult with an attorney of their  
2 choosing. Respondents understand and hereby knowingly and voluntarily waive, any and all procedural  
3 rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This  
4 includes, but is not limited to the right to appear personally at any administrative hearing held in this  
5 matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all  
6 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
7 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
8 reviewed.

9           5.       Respondents agree to the issuance of the decision and order set forth below. Also,  
10 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
11 \$7,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General  
12 Fund of the State of California—is/are submitted with this stipulation as full payment of the  
13 administrative penalty described above, and same shall be held by the State of California until the  
14 Commission issues its decision and order regarding this matter.

15           6.       If the Commission declines to approve this stipulation—then this stipulation shall become  
16 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
17 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to  
18 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing  
19 before the Commission becomes necessary, neither any member of the Commission, nor the Executive  
20 Director, shall be disqualified because of prior consideration of this Stipulation.

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